

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

FILE: [REDACTED]
MSC 02 244 61418

Office: ST. PAUL

Date: DEC 14 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert F. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, St. Paul, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Specifically, the director determined that the applicant failed to satisfy his burden of proof in these proceedings.

On appeal, counsel contends that the applicant established by a preponderance of the evidence that he was eligible to adjust status to that of legal permanent resident. In support of this contention, counsel re-submits a detailed brief outlining her assertions.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

Although Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In the affidavit for class membership, which he signed under penalty of perjury, the applicant stated that he first arrived in the United States in November 1981, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury, the applicant claimed to live at the following addresses during the requisite period:

November 1981 to December 1982:
January 1983 to December 1984:
January 1985 to December 1987:
January 1988 to Present:



In an attempt to establish continuous unlawful residence in the United States since before January 1982 through 1988, the applicant furnished the following evidence:

- (1) Affidavit dated March 2003 from [REDACTED] claiming that he grew up in the same town in Mexico as the applicant. He claimed that he believes he came to the United States in the summer of 1981, and encountered the applicant at a Christmas party in Orange, California that same year. He further claimed that the applicant lived in Orange at the same time he did, and that they would see each other once or twice a month. Finally, he claimed that he thought the applicant "did a lot of different jobs." The affiant did not provide the address at which he knew the applicant resided during this period.
- (2) Affidavit dated February 10, 2003 from [REDACTED] claiming that he also grew up in the same town in Mexico as the applicant. He claims that he came to the United States at the end of 1979 and that the applicant came to the United States approximately one year later, specifically noting that it was around Christmas 1980. He claimed that the applicant and the

applicant's brother stayed with him on [REDACTED] in Orange, CA, and that the applicant lived with him for approximately five to six years. He further claimed that they all worked various jobs for various employers in the fields of construction, landscaping, yard work and painting. The affiant's claim that the applicant lived with him on [REDACTED] for five to six years directly contradicts the applicant's claim on Form I-687 that he resided at [REDACTED] in Santa Ana from November 1981 to December 1982 as well as various units on [REDACTED] [REDACTED] from January 1983 to December 1987.

- (3) Affidavit dated March 13, 2003 from [REDACTED] who claims that he met the applicant in a park called La Paloma in Orange, CA in Spring 1981, where they would meet and play baseball. He claims that they would get together about once or twice a month in Orange until the applicant moved to Minnesota in 1990.
- (4) Letter of recommendation dated April 12, 1990 from [REDACTED] who claims that he has known the applicant since the fall of 1981. The affiant claims that the applicant performed various jobs for him such as yard work and home maintenance. The letter omits any additional information pertaining to the applicant's residence at the time or the exact dates of his employment, and further does not identify the city or state in which these services were provided.
- (5) Affidavit dated April 4, 1990 from [REDACTED] claiming that he met the applicant at a park while they were playing soccer in 1981. No additional information, such as the name of the park, the address of the applicant during this time, or the origin of the information being attested to was provided.
- (6) Letter dated June 24, 1993 from [REDACTED], CMF, Associate Pastor of La Purisima Catholic Church, claiming that the applicant, who resides at [REDACTED] Orange, CA 92669, is a member of the church and has been a member since 1981. This letter fails to satisfy the regulatory requirements, since it omits critical elements such as the origin of the information provided and the manner in which the pastor is acquainted with the applicant, as required by 8 C.F.R. §§ 245a.2(d)(3)(v)(F) & (G).
- (7) Affidavit dated June 13, 1990 from [REDACTED] claiming that she has known the applicant to live in Orange, CA since December 1981 and that she met him in Church. She does not specify to what church she refers.

On August 12, 2003, CIS issued a Notice of Intent to Deny (NOID) the application. The district director noted that the a request for evidence had been issued on April 10, 2003, but neither the applicant nor counsel had submitted a response. The director advised that the record did not contain credible and verifiable evidence that the applicant continually maintained an unlawful status in the United States since before January 1, 1982 through 1988, and afforded the applicant an additional thirty days in which to file a response or rebuttal.

In a response dated September 10, 2003, counsel contended that the applicant had no additional documentation, such as rental receipts, bills or correspondence indicating his presence in the United States during the relevant period. The director subsequently denied the application December 9, 2003, noting that there was insufficient evidence to show that the applicant entered and maintained continuous unlawful status in the United States from before January 1, 1982, the beginning of the qualifying period,

through 1988, or that he had maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Although the director noted the applicant's numerous affidavits of acquaintance, the director noted there was no evidence of the applicant's entry prior to January 1, 1982 and insufficient evidence of his unlawful and continuous presence in the United States through 1988.

On appeal, counsel asserts that the director overlooked key evidence, and asserts that the affidavits and letters provided prior to adjudication corroborate the claims of the applicant and satisfy his burden of proof. The AAO disagrees.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-- M--*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E--M--* also stated that "[t]ruth is to be determined not by the quality of evidence alone but by its quantity." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421. (1987)(defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The *Matter of E-- M--* decision provides guidance in assessing evidence of residence, particularly affidavits. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application, and there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982.

Although the applicant claims he entered the United States in November 1981, he likewise claims that he entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. In support of his entry and his continuous unlawful presence in the United States from 1982 to 1988, the applicant relies on numerous affidavits, many of which provide conflicting information. For example, the affidavit of [REDACTED] claims that he encountered the applicant at a Christmas party in Orange, California in 1981, which tends to support the applicant's claim of entry in November 1981. However, the affidavit of [REDACTED] specifically claims that the applicant came to the United States around Christmas 1980. Moreover, the affidavit of [REDACTED] claims that he met the applicant in a park in the Spring of 1981. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner

submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. Although numerous affidavits of acquaintance have been submitted, the documents are inadequate and do not contain enough information to support a credible finding that the applicant was continually maintaining an unlawful status in the United States between 1982 to 1988.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

The affidavits, provided in support of the applicant's continuous unlawful status between 1982 and 1988, fall far short of meeting the above criteria. For example, the affidavit of [REDACTED] again raises doubts, since he claims that the applicant lived with him on [REDACTED] in Orange, CA for approximately five to six years beginning in December 1980. While the letter from [REDACTED] tends to corroborate this claim, since he lists the applicant's address as [REDACTED] Orange, CA 92669, the fact remains that the applicant never made a claim to have lived on [REDACTED]. Specifically, his Form I-687, executed under the penalty of perjury, indicates that he lived first in Santa Ana, CA and next on [REDACTED] in Orange, CA. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Furthermore, the statements provided in the other affidavits provide minimal information regarding the nature of their relationships and the basis of their knowledge of the applicant. Merely claiming that they know him through an unspecified church or baseball league is not enough to satisfy the applicant's burden of proof in these proceedings. The omission of the applicant's address at the time of their acquaintance, as well as a statement regarding period of the applicant's continuous residence, render these statements less than persuasive. These brief and somewhat generic statements fail to conform to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3).

Given the absence of contemporaneous documentation and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status from January 1, 1982 through 1988. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.